

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

DEBORAH GARRET, CHARLES GARRETT,)
and KENNETH GARRETT, on behalf of)
plaintiffs and the class defined herein)

Plaintiffs,)

v.)

Docket No. 3:18-CV-00273-HSM-HBG

WESTSIDE GASTROINTESTINAL)
SPECIALISTS, PLLC, J. TYLER ROPER,)
ACCOUNTS RESEARCH, INC. and)
unidentified persons and/or entities that are)
current or former clients of ACCOUNTS)
RESEARCH, INC.,)

Defendants.)

DEFENDANT’S MOTION TO VACATE ORDER

COMES the Defendant, Westside Gastrointestinal Specialists, PLLC, (“Westside), by and through counsel, pursuant to Rule 60 of the *Federal Rules of Civil Procedure*, and respectfully moves this Honorable Court to vacate its Order Granting the Unopposed Motion for Extension of Time, [Doc. 27] and grant Westside the full time allowed by the waiver of service [Exhibit A] in which to file a response to the Complaint. The undersigned has conferred with Plaintiffs’ counsel on this issue, and counsel does not object. *See infra*. As grounds for this Motion, Westside would show the Court as follows:

1. The Plaintiffs filed their Class Action Complaint on July 2, 2018. [Doc. 1]. A summons was issued for Westside, attempted to be served by certified mail, and returned to the Court as executed on August 16, 2018. [Doc. 13].

2. On September 5, 2018, the Plaintiffs filed an Application for Entry of Default as to Westside based on their failure to file a response to the Complaint. [Doc. 18]. Upon receiving

the Application for Default, Westside retained its current counsel. In order to avoid an entry of default, Counsel for Westside immediately contacted Plaintiffs' counsel to request an extension of time to file a response to the Complaint, to which Plaintiffs' counsel agreed.

3. On September 13, 2018, Westside filed its Unopposed Motion for Extension of Time. [Doc. 26]. This Motion was granted, and the Court ordered Westside to file a response by September 27, 2018. [Doc. 27].

4. Westside has now had the opportunity to investigate the claims asserted by the Plaintiffs, including applicable procedural defenses. During this investigation, Westside determined that service of process was not properly effectuated upon it. Upon this realization, counsel for Westside conferred with counsel for the Plaintiffs to discuss this matter and attempt to reach a resolution. A resolution has been reached, and Westside has agreed to waive service of process.

5. Counsel for Plaintiffs has provided Westside with the proper of waiver of service documents, which have been executed and returned to Plaintiffs' Counsel. [Exhibit A]. The waiver of service provides that Westside will have sixty days from September 19, 2018, to file a response to the Complaint.

WHEREFORE, Westside respectfully moves this Honorable Court to vacate the Order requiring it to file a responsive pleading by September 27, 2018, [Doc. 27] and grant the full time allowed by the waiver of service [Exhibit A] in which to file such a pleading.

Respectfully submitted this 25th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

This the 25th day of September, 2018.

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